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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS and MARGARET W. COLLINS,
Petitioners,

v.

THE UNITED STATES, *Respondent*.

REPLY BRIEF OF PETITIONERS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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It is deemed necessary to re-emphasize the points wherein we believe the decision by the Court of Claims showed either a misconception of the issues involved or failed to properly adjudicate and protect the constitutional rights of Petitioners, established by the admitted facts, the governing statutes and the 5th and 14th Amendments to the Constitution, directly applicable to said issues:

1. There is no issue here as to the contention in Petitioner's Petition that they were deprived of due process by presumption in Section 931(i) of the Internal Revenue Code of 1954 stating arbitrarily that their earnings for the years 1953 and 1954 were foreclosed by the assumption in said sub-section (i) that their incomes were earned and received by them *in territory "deemed to be within the United States,"* when in fact, such earnings were earned and received *without* the U. S.

The Court of Claims failed to pass upon the constitutional question raised by Petitioners and put in issue by the Respondent, in the Court of Claims and in their brief in this Court.

APPARENT ERRORS OF FACT IN "STATEMENT" OF RESPONDENT

(A) In Respondent's Brief herein is the following "statement" or conclusion of the pleader and as determined by the Court of Claims:

> "The Canal Zone Government, a separate entity, is charged with the functions of civil government; such as police and fire protection, school, Magistrate Courts, and other similar activities."

(B) On page 2 of their brief herein, the Respondent makes the following inadmissible statement:

> "The Canal Zone Government which is also a separate entity is *also part of the United States Government.*"

We do not agree at all that the Canal Zone Government is "*also part of the United States Government.*" We do agree that the Canal Zone Government is "a separate entity," charged with certain functions, as decided by the Court of Claims, but we do not subscribe to the Statement of Defendants that the *Canal Zone Government is part of the United States Government.* We maintain that, being a separate entity, it must also be treated as another contracting party dealing with the United States from an area *without the United States.*

The Court of Claims avoided the constitutional *due process of law issue* and disposed of the case by a statement, in the nature of a conclusion of law and fact, that the Panama Canal Zone was and is located "in an area within the legislative power of the United States," dis-

regarding the Plaintiff's *right* to a determination of the question of whether or not their *right to due process* of law, under the 5th and 14th Amendments to the Constitution were arbitrarily and capriciously denied.

(C) The Constitutional question raised by Petitioners was not decided by the Court of Claims.

(D) Following the above, the Court of Claims held that the income of Petitioners was "derived from sources within the United States, and we hold it within the taxing power of the Congress."

The Court of Claims leaves unsettled and "at large", the constitutional question which the Court and all parties agreed was the issue between the Petitioners and the Respondent.

Whether the area was "within the legislative power of the United States," as stated by the Court, was a question not raised by either party; no proof was proffered or received thereon nor was any argument or legal citation submitted on that question, by either of the parties, and it is earnestly submitted that said conclusion by the Court of Claims was unwarranted, erroneous, arbitrary and capricious as shown by the record and is contradictory of its Findings of Fact and of the applicable statutes defining the Panama Canal Zone and its geographical status and the area of operation of the Panama Canal Government.

The Internal Revenue Statute Code 1954, Sec. 931(i), and the decisions of this Court have been discussed at great length in our Petition for Certiorari and the numerous cases cited therein. We now wish to re-enforce our Petition by quoting fully from Sec. 862 of The Internal Revenue Code of 1954, which was referred to generally in Plaintiff's Petition for Certiorari. After more mature consideration we respectfully submit that Section 862(a) and sub-section 3 and sub-section (b) are conclusive upon the question of where Plaintiff's earnings were accrued

and why such earnings should be free of Internal Revenue Taxation.

"862. INCOME FROM SOURCES WITHOUT THE UNITED STATES (a) *Gross income from sources without United States.*—The following items of gross income shall be treated as income from sources without the United States:

(3) *compensation for labor or personal services performed without the United States*;

(b) *Taxable income from sources without United States.*—From the item of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources *without the United States.*"

In view of the above facts and the applicable statutes just quoted the conclusion is inescapable that the acts of the Canal Zone Government and the Panama Canal Company were the acts of separate contracting entities, operating in a territory within the sovereignty of the Panama Republic, hence in an area without the United States geographically, and not within the geographical area of the United States, as legally determined by Sec. 7701, page 995, Internal Revenue Code 1954, as follows:

"*The United States.*

"The term United States, when used in a geographical sense, includes only the States, The Territories of Alaska and Hawaii (now states) and the District of Columbia."

The Court of Claims findings of fact stated: (App. 7a, p. 10, that:

"The Canal Zone is an area approximately 10 miles wide, 5 miles on each side of the center line of the

waterway, extending from deep water in the Atlantic Ocean to deep water in the Pacific Ocean, excepting the City of Panama on the Pacific side, and Colon on the Atlantic side, which are adjacent to the Canal Zone terminal Communities of Balboa and Cristobal respectively."

This Court will take judicial notice:

The area just described lies within the sovereign territory of the Panama Republic, App. Par. 11, Page 8a, and could not be within the boundaries of the United States.

"The Convention of 1903, by preamble, acknowledges *sovereignty vested in Panama* which then in turn grants to the United States in perpetuity and *as if it were sovereign*, the use, occupation and control of the Canal Zone in return for an outright payment of $10,000,000, plus an annual payment during the life of the Convention, of $250,000.00."

Plaintiff's App. Page 8a ¶11—

From the Finding of Fact by the Court of Claims, the following facts are conclusively stated in Par. 19, page 10a, Petitioners' App. as follows:

"The Panama Canal Company pays its employees who work in the Canal Zone with checks drawn on its payroll account with a Canal Zone Bank."

The Respondent—The United States, cites as authority for denying to plaintiffs tax exemptions for the years 1953 and 1954, the case of *Cook* v. *Tate*, 265 U.S. 47.

We submit that this case, as modified by subsequent decisions, does not justify the conclusion of the Respondent, and we further submit that the Respondent has placed a construction on the case too narrow in character. And the factual conclusions used to support their contentions are not established, but assumed.

For instance, in order to make the Cook case applicable the Respondent's brief, page 3, herein, says:

> "Consequently, American Citizens residing in a possession of the United States and receiving income from the United States *Government itself are surely within* the taxing power of Congress."

Income derived from the Panama Canal Area, we insist, is not "*income from the United States Government, itself,*" hence the conclusion based upon such an arbitrary statement is inadmissible and contrary to the law and violative of the findings of Fact by the Court of Claims, as printed in full in our App., pages 4a to 10a.

It is also clear, we urge, that the claimed exemption from taxation on their incomes earned in the Canal Zone for the years 1953 and 1954 etc., is sustained fully in the cases and statutes cited—

The brief of the Respondent, under Title "Statement", page 2 misstates the status of the Panama Canal Zone Government when it says:

"The Canal Zone Government, a separate entity, *which is also part of the United States Government*". No such status exists. Being a separate entity indicates, as a matter of fact and law, that the two contracting parties, are separate entities, hence, with different governmental functions and powers, and have the right to make contracts between themselves.

As stated by the Court of Claims' Findings of Fact and in Respondent's brief in this case the Canal Zone Government" is charged with the function of civil government in the Canal Zone (Pet. App. 7a); Respondent's brief herein, p. 2.

A statement in Respondent's brief which we deem erroneous, is that on p. 3 of Respondent's brief wherein is the following:

> "The Court of Claims in a per curiam opinion held that the tax did not violate the due process clause of the Fifth Amendment, and therefore the taxpayers were not entitled to recover."

The Court of Claims opinion is based upon the erroneous finding that the income of the plaintiffs was "derived from sources within the United States", and that Court, in its opinion held that the area where Petitioners were employed in 1953-1954 was "within the taxing power of the Congress," and that "Petitioners are therefore not entitled to recover, and their petition, as amended, will be dismissed."

The above conclusion is not a finding upon the constitutionality of the Internal Revenue law, Sec. 931 (i), but an avoidance of passing upon the constitutional question of the arbitrary violation of the *due process* clauses of the Fifth and Fourteenth Amendments which Petitioners claimed as protection to their property rights under said amendments.

The *Cook* case cited in Respondent's Brief, p. 3—was an interpretation of a statute, expressly permitting income tax upon Petitioners' income derived from property located at the place of his residence *abroad* and does not decide or affect the questions raised by the irrebuttable presumption by Sec. 931(i), Internal Revenue Code (i) 1954;—

Nor does the case of *Bennett*, 232 U.S. 299, support the argument of Respondent. This case gets its authority from a specific Statute, the Act of Aug. 5, 1909, 36 Stat-at-Large 112 and related to taxation on a boat of a citizen abroad. No arbitrary assumption was involved in either of the above cases.

In view of the findings of fact cited, the statutes involved and the numerous decisions supporting the exemptions of Petitioners from revenue taxation on their 1953 and 1954 incomes, it appears clear and without doubt that their

claims for refund should have been favorably considered and allowed, and that their Petition for Certiorari should be granted, and the important questions certified for consideration by this Court.

Respectfully submitted,

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NOTE: All italics are by Petitioners.